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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,094	12/06/2000	David Salgado	D/A0598 XER 20373	9375
7590	02/22/2006		EXAMINER	
Albert P. Sharpe, III, Esq. Fay, Sharpe, Fagan Minnich & McKee, LLP 1100 Superior Avenue, 7th Floor Cleveland, OH 44114-2518			POON, KING Y	
			ART UNIT	PAPER NUMBER
			2624	
DATE MAILED: 02/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/731,094

Applicant(s)

SALGADO ET AL.

Examiner

King Y. Poon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1, 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (US 6,006,034) in view of Alderson (US 5,019,963) and Marbry et al (US 5,692,111).

Regarding claims 1, 7: Heath teaches a method for automatically updating a software on a computer (column 4, lines 50-59) comprising the steps of: (A) contacting a remote network location (column 4, lines 44-46) using a contact subroutine installed on said computer (the program of the application program that transmit a request signal, column 4, lines 35-40, note: it is well known in the art that a program consists of many subroutine to be called by the program for performing different functions, official notice), (B) comparing a first version of the software installed on the computer with a second version stored at the remote network location using a determining subroutine installed on said computer (column 4, lines 50-55, column 1, line 65), (C) downloading and installing the software from the remote location onto the computer if it is a more recent version of the printer driver than said first version currently installed on the computer using a downloading and installing subroutine installed on said computer (column 2, lines 1-5, column 4, lines 55-60), and (D) uninstalling the version of the software previously stored on the computer using an uninstalling subroutine installed on said computer (column 6, lines 58-60).

Heath's invention is applied to modules in general (column 2, lines 60-63). Heath does not specify that the module is a printer driver.

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Marbry and Alderson teach print driver software in a computer requires download and update (column 2, lines 5-11, Marbry; column 6, lines 57-66, column 2, lines 10-40, Alderson).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: using his invention to update printer driver.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath because: (a) it would have expand the use of Heath to create a bigger market, (b) it would have benefit the printer driver update process in the Internet environment (column 3, lines 20-25, column 4, lines 27-40, Heath); and (c) it would have reduced the server processor power for updating clients' printer driver as taught by Heath, column 4, lines 25-27.

Regarding claim 3: Heath teaches in which each step is performed at a designated time or upon the occurrence of a designated event (inherently, all computer's program steps are performed at a designated time or upon the occurrence of a designated event) without prompting by the computer user (software upgrade is performed by a computer program, column 4, lines 34-40).

Regarding claim 4: Heath teaches in which the second version is stored at a location a system administrator (since a computer would not have any program stored without being loaded/supplied with the program; therefore, there must exist (inherent) a person that decides what is being stored in the computer) can control which versions of printer drivers are stored there.

Regarding claim 5: Heath does not teach in which the level of user interaction required in the updating process can be varied.

Alderson teaches in which the level of user interaction required in the updating process can be varied (the system can be programmed for allowing user to invoke updating to automatically, column 5, lines 15-20, column 7, lines 9-11).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: in which the level of user interaction required in the updating process can be varied.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath by the teaching of Anderson because it is always advantages (most user desires) to have a user to determine how many control a computer is having.

Regarding claim 6: Heath teaches in which the steps are performed without cessation or interruption (if the computer stops/interrupted from running the program of the computer system, the computer system (inherently) cannot perform program steps without the program) of the computer system or its programs during the execution of the steps.

Regarding claim 8: Heath teaches wherein the subroutines are program subroutines of the printer driver/application program (column 4, lines 35-40).

Regarding claim 9: Heath teaches in which the steps are performed without cessation or interruption (if the computer stops/interrupted from running the program of the computer system, the computer system (inherently) cannot perform program steps

without the program) of the computer system or its programs during the execution of the steps.

Regarding claim 10: Heath does not teach the subroutines of claim 7 are part of a program distinct from the printer driver.

Anderson teaches the upgrade program are distinct from the printer driver (program 30 and 32 are different entities, fig. 4).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: subroutines of claim 7 are part of a program distinct from the printer driver.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath by the teaching of Anderson because it would have used one update software for all the software to be updated instead writing different update subroutine for each program.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (US 6,006,034) in view of Alderson (US 5,019,963) and Marbry et al (US 5,692,111) as applied to claim 1 above, and further in view of Davis et al (US 5,742,829).

Regarding claim 2: Heath does not teach in which the comparing step includes querying the second version of the driver by reading from the initialization file of the second version to determine its version.

Davis, in the same area of installing software, teaches when determining a newer version of a software, it is well known to perform a comparing step of: querying the

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second version of the driver by reading from the initialization file of the second version to determine its version (column 13, lines 50-60).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: a comparing step includes querying the second version of the driver by reading from the initialization file of the second version to determine its version.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath by the teaching of Davis because of the following reasons: (a) it would have allowed Alder's invention to be implemented in Microsoft environment, column 13, lines 20-30; and (b) using in a Microsoft environment would have allowed Alder's system to have many users because Microsoft is one of the biggest computer software company.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (US 6,006,034) in view of Alderson (US 5,019,963) and Marbry et al (US 5,692,111) as applied to claim 7 above, and further in view of Goodman et al (US 6,757,071).

Heath does not teach the printer driver is configured to be used with a xerographic print system.

Goodman teaches printing using xerographic print system requires a printer driver, (column 5, lines 10-25).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: printer driver is configured to be used with a xerographic print system.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath because (a) it would allowed the invention of Heath to be expanded, and (b) it would have benefit the xerographic printer driver updating process.

Response to Arguments

4. Applicant's arguments filed 2/3/2006 have been fully considered but they are not persuasive.

With respect to applicant's argument that Heath is specifically directed to application program and not printer driver, has been considered.

In reply: It is true that Heath's invention is directed to application program and does not specifically mention printer driver. An application program is the name of a group consist of different software programs. There are many types of application programs such as word processor or printer driver (Lorie et al US 6,993,205, column 1, lines 30-35; Lorie is used only as a dictionary for the meaning of the term application program). If a person invents a product to benefit mammals, it would have been obvious to a person with ordinary skill in the art to think about that the person's invention would benefit a dog, even though the person does not specifically mention benefiting a dog. The same logic applies here. Although Heath does not specifically

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mention printer driver, it would have been obvious to a person with ordinary skill in the art to at least consider that Heath's invention would be able to use to update a printer driver. The question is whether application program printer driver requires updated. If the printer drive is not a program that requires updates, then Heath's invention does not apply-and vice versa.

Column 6, lines 55-60, column 4, lines 45-60, column 3 of Alderson clearly teaches that a printer driver requires update. The examiner is not relying on Alderson for the techniques for updating. Alderson's reference is used to inform users/reader of Heath that application program such as printer driver needs to be updated.

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: using his invention to update an application program such as a printer driver.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath because: (a) it would have expand the use of Heath to create a bigger market, (b) it would have benefit the printer driver update process in the Internet environment (column 3, lines 20-25, column 4, lines 27-40, Heath); and (c) it would have reduced the server processor power for updating clients' printer driver as taught by Heath, column 4, lines 25-27.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lorie et al (US 6,993,205), column 1, lines 30-35, teaches that printer driver is generally considered as an application program in the printing art.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to King Y. Poon whose telephone number is 571-272-7440. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Moore can be reached on 571-272-7402. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 17, 2006

A handwritten signature in black ink, appearing to read 'KYP', is centered on the page.

**KING Y. POON
PRIMARY EXAMINER**